

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE**

**UNITED STATES OF AMERICA** )  
                                  )  
                                  )  
v.                              )  
                                  )  
**MICHAEL ISSAC BETHEL**    )  
                                  )

**NO. 3:08-CR-118**

**MEMORANDUM AND ORDER**

Before the Court are several motions filed by defendant: (1) “Judges Sua Sponte Authority” jurisdiction [Doc. 80]; (2) motion for court records and appointment of counsel [Doc. 81]; (3) motion for appointment of counsel [Doc. 82]; and (4) motion to reduce sentence pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). Defendant asks the Court to reduce his sentence to “time served.” For the following reasons, defendant’s motions are denied.

Defendant was charged in an 11-count indictment with five counts of Hobbs Act robbery with a firearm, and one count of being a felon in possession of a firearm [Doc. 18]. Pursuant to a plea agreement, defendant pled guilty to two counts of using a firearm in furtherance of the Hobbs Act robberies [Doc. 37]. The government dismissed the remaining counts of the indictment at sentencing. Pursuant to 18 U.S.C. § 924(c), defendant faced a mandatory 7-year sentence on the first firearm count and a mandatory 25-year sentence on the second, the sentences to run consecutively, for a total sentence of 32 years imprisonment. On May 6, 2011, defendant was sentenced to 384 months (32

years) imprisonment [Doc. 42]. Defendant did not appeal his conviction or sentence. Defendant is currently scheduled to be released from the Bureau of Prisons on February 23, 2037.

Defendant later filed a motion for post-conviction relief pursuant to 28 U.S.C. § 2255 on October 19, 2011 [Doc. 43]. Defendant voluntarily dismissed that motion [*see* Docs. 67, 68]. He later submitted a second petition attacking his conviction based on the Supreme Court's decision in *Johnson v. United States*, 135 S. Ct. 2252 (2015) [Doc. 51]. Because this filing constituted a second or successive § 2255 motion, the Court transferred the motion to the Sixth Circuit Court of Appeals pursuant to 28 U.S.C. § 1631. The Sixth Circuit denied defendant's motion for authorization to file a second or successive § 2255 motion finding that *Johnson* did not invalidate the residual clause of 18 U.S.C. § 924(c)(3)(B) [Doc. 77].

Defendant filed another motion for sentence reduction on December 1, 2014 [Doc. 61]. That motion was denied by the Court finding that defendant was sentenced to the statutory minimum term of imprisonment for two violations of § 924(c); the statute had not been amended; and there was no basis to reduce his sentence [Doc. 79].

Defendant now moves for a sentence reduction citing the Supreme Court decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018) and *United States v. Davis*, 139 S. Ct. 2319 (2019). He also moves for compassionate release due to his chronic lung condition – tuberculosis.

Pursuant to the Court’s SO 19-04, Federal Defender Services reviewed defendant’s motions to reduce sentence in light of *Davis* and filed a Notice that it did not intend to file any pleadings on defendant’s behalf [Doc. 83].

#### **A. 18 U.S.C. § 924(c) Conviction**

Defendant challenges the constitutionality of § 924(c)’s “residual clause” in light of the holdings in *Dimaya* and *Davis*. Section 924(c) authorizes heightened criminal penalties for using, carrying, or possessing a firearm in connection with any federal crime of violence. A crime of violence for purposes of a § 924(c) conviction is defined in two subparts. The first part, which is generally referred to as the “elements clause,” defines a crime of violence as one that has “as an element, the use, attempted use, or threatened use of physical force against the person or property of another.” § 924(c)(3)(A). The second part, which is referred to as the “residual clause,” defines crime of violence as one that “by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.” § 924(c)(3)(B).

In *Dimaya*, the Supreme Court invalidated the residual clause in 18 U.S.C. § 16(b), which defined “crime of violence” under the Immigration and Nationality Act. *Dimaya*, 138 S. Ct. at 1214-15. In *Davis*, the Supreme Court held that § 924(c)(3)(B)’s residual clause defining a “crime of violence” is unconstitutionally vague. Accordingly, any § 924(c) conviction where the predicate offense was a crime of violence under the residual clause is unconstitutional under *Davis*. However, § 924(c) convictions where the predicate offense was a crime of violence under the elements clause remain valid. *See United States*

*v. Richardson*, 948 F.3d 733, 741 (6<sup>th</sup> Cir. 2020) (*Davis* leaves intact a separate definition of crime of violence supplied by the statute’s “elements clause”).

Relevant here, the Sixth Circuit has concluded that Hobbs Act robbery is a crime of violence under the elements clause of § 924(c)(3)(A). *United States v. Camp*, 903 F.3d 594, 597 (6<sup>th</sup> Cir. 2018); see also *United States v. Gooch*, 850 F.3d 285, 291-92 (6<sup>th</sup> Cir. 2017) (Section 1951(b)(1) clearly “has as an element the use, attempted use, or threatened use of physical force against the person or property of another” as necessary to constitute a crime of violence under § 924(c)(3)(A)). The rulings in *Dimaya* and *Davis* address only the residual clause, and thus, do not impact defendant’s case and relief must be denied.

## **B. First Step Act/CARES Act**

Next, the Court will address defendant’s pro se motions to reduce sentence or release to home confinement pursuant to the First Step Act/CARES Act. In support of his motion, defendant states that he suffers from a chronic lung condition – tuberculosis – which puts him at increased risk of infection, grave illness, and death due to COVID-19. Defendant states he submitted a request for compassionate release to the Warden at his facility but has not submitted a copy of his request or any denial of his request from the Warden.

A district court may only amend a final judgment when Congress has given it authority to do so by statute. *United States v. Thompson*, 714 F.3d 946, 948 (6<sup>th</sup> Cir. 2013). Courts are receiving release requests under two distinct statutory “mechanisms” during the current pandemic – the Coronavirus Aid, Relief, and Economic Security Act (CARES Act),

Pub. L. No. 116-136, 134 Stat. 281 (2020), and what is often referred to as the “compassionate release” framework set forth in 18 U.S.C. § 3582(c)(1)(A).

First, Section 12003 of the CARES Act presently and temporarily provides for expanded prisoner home confinement under the framework set out in 18 U.S.C. § 3624(c). CARES Act, Pub. L. No. 116-136, 134 Stat. 281 (2020). The CARES Act places decision making authority solely within the discretion of the Attorney General and the Director of the Bureau of Prisons. *See id; accord* 18 U.S.C. § 3624(c)(2). Courts therefore do not have power to grant relief under Section 12003 of the CARES Act.

Alternatively, 18 U.S.C. § 3582(c)(1)(A)(i) allows district courts to consider prisoner motions for sentence reduction upon a finding of “extraordinary and compelling reasons.” However, 18 U.S.C. § 3582(c), as amended by the First Step Act of 2018, provides that defendants may move for what is often called compassionate release only “*after* the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant’s behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant’s facility, whichever is earlier.” 18 U.S.C. § 3582(c)(1)(A) (emphasis added).

Here, defendant states he submitted a request for compassionate release to the Warden at his facility which was denied. But, defendant has not provided the court with any proof showing that he submitted a request or that the Warden denied his request. Even in the midst of the COVID-19 pandemic, the Court cannot disregard the exhaustion requirement of 18 U.S.C. § 3582(c)(1)(A), as set forth by Congress. *United States v. Boyd*, 2020 WL 2106023 at \*1 (E.D.Tenn. May 1, 2020). Thus, the Court cannot weigh the

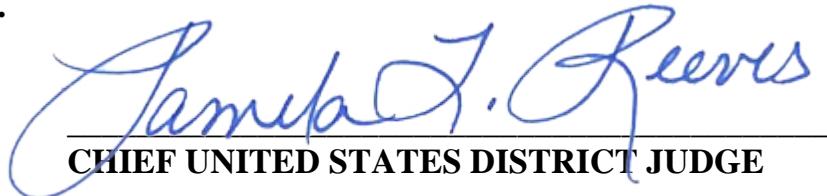
merits of defendant's motion under the "compassionate release" framework until the exhaustion requirement of 18 U.S.C. § 3582(c)(1)(A)(i) is satisfied.

While it sympathizes with defendant's concerns, the Court does not have the power to reduce his sentence until the exhaustion requirements of 18 U.S.C. § 3582(c)(1)(A) have been met. Therefore, defendant's motions for sentence reduction [Doc. 80, 84] are **DENIED**.

Defendant's motions for appointment of counsel and for copies of records and transcripts [Doc. 81, 82] are also **DENIED**.

The Clerk is directed to send a copy of this Memorandum and Order to Michael Bethel, #32297-074, Federal Correctional Institution, P.O. Box 725, Edgefield, South Carolina 29824.

**IT IS SO ORDERED.**



**Linda T. Reeves**  
CHIEF UNITED STATES DISTRICT JUDGE